IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 27 of 1993
and
WEALTH TAX REFERENCE No 27-A of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF WEALTH TAX

Versus

MANUBHAI SHIVABHAI PATEL

Appearance:
1. WEALTH TAX REFERENCE No. 27 of 1993
MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 24/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question of law has been referred to this court for its opinion in these references by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C' under the provisions of sec. 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as 'the Act') :

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in allowing exemption u/s 5(1A)(xxvi) of the W.T. Act in respect of assessee's share in the bank deposits held by the firm M/s. Manibhai and Brothers in which the assessee is a partner?"

2. We have heard learned Standing Counsel Mrs. Mauna Bhatt for the applicant revenue. Nobody has appeared for the respondent assessee though the respondent assessee has been duly served with the notice of this court.

3. The facts giving rise to the present reference, in a nutshell, are as under :

4. The assessee was a partner in a partnership firm, named, M/s. Manibhai and Brothers. The said firm had invested its funds in a bank. It is pertinent to note that the amount of deposit with a bank, to which the Banking Regulation Act, 1949 applies, is not to be included in the net wealth of an assessee. The assessee had therefore claimed exemption under the provisions of sec. 5(1A)(xxvi) of the Act in respect of his share in the amount of bank deposit, which the firm had invested with a bank.

5. The Wealth-tax Officer rejected the claim made by the assessee and, therefore, the assessee filed an appeal before the Deputy Commissioner of Wealth-tax (Appeals). The Dy. Commissioner of Wealth-tax (Appeals) allowed the appeal on the basis of a decision given by the Tribunal in Wealth Tax Appeals Nos. 40 to 42/Ahd/1980 dt. 11.12.1980 in the case of Shri Manibhai S. Patel.

6. Being aggrieved by the said order passed by the appellate authority, the revenue filed an appeal before the Tribunal. The Tribunal rejected the appeal because

the Tribunal had already decided the said point in favour of an assessee in Wealth Tax Appeals Nos. 37 to 39/Ahd/1980 decided on 11.12.1980.

7. The learned counsel appearing for the revenue has fairly submitted that during the pendency of this reference, the question, which has been involved in this reference, has been decided by this court in the case of CWT v. Maheshkumar R. Patel, 216 ITR 272.

8. Looking to the law laid down by this court in the judgment referred to hereinabove, we answer the question referred to this court in the affirmative, that is, in favour of the assessee and against the revenue.

The references, thus, stand disposed of with no order as to costs.

(A.R. Dave, J.)

(A.M.Kapadia, J.)

(hn)